which is somewhat similar to our section 27(2), it was held that the object of the licence was to secure observance of certain conditions of every member of the procession and not merely by the licensee. The licence was granted to the directors or promoters of the procession as a matter of convenience as it would not be practical to require every potential member of a procession to take out a licence. The directors or promoters of a procession who took out a licence in such a case therefore became responsible for the conduct of the processionists. It would obviously be the duty of the licensee in such a case to explain the conditions of the licence to all who wished to take part in the procession. Finally, in the case of *Emperor* v. *Het Ram*,[3] it was held that a licensee assumed responsibility for the entire conduct of the procession and its component members and he could not repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge or in his absence. If any member of the procession was guilty of the breach of the conditions of the licence, the licensee was liable to be prosecuted for it.

Although the authorities cited above are concerned with processions, in my view, the same principles apply to a person to whom a licence is issued to convene a public rally or assembly. The evidence of the prosecution in this case clearly showed that the respondent was present when Lau Dak Kee was giving his speech in Hakka, in contravention of condition 14 of the licence. Under the circumstances, I hold that the learned Magistrate erred in law and in fact in acquitting and discharging the respondent at the close of the case for the prosecution. Applying the principle in *Het Ram's* case, the respondent as a licensee of the assembly assumed responsibility for the entire conduct of the rally and its component members, and he cannot repudiate such responsibility by alleging that the violation of condition 14 took place without his consent or even without his knowledge or in his absence. Since Lau Dak Kee, one of the speakers at the rally is guilty of the breach of condition 14 of the licence, the respondent is liable to be prosecuted.

Under the circumstances, I allow this appeal by setting aside the order of acquittal and discharge. I also order that this case be remitted to the same Magistrate at Petaling Jaya for calling the respondent to enter his defence.

Appeal allowed.

Solicitors: *Karpal Singh, Wong & Co.*

SOUTH MALAYSIA INDUSTRIES BHD. v. COLLECTOR OF LAND REVENUE, JOHOR BAHRU

[O.C.J. (Syed Othman J.) June 15, 1976]
[Johore Bahru — Originating Motion No. 6 of 1976]

Land Law — Forfeiture — Application by Collector to forfeit land — Land leased, inter alia, "solely for the erection of a factory" — Whether renting out a portion of factory to an urea company for use as a store constitutes a breach of condition — National Land Code, ss. 117, 128 & 129.

The applicant was granted a 60 year old lease over 3 acres of state land with special conditions, the main one being that it was to be used "solely for the erection of a factory". After the factory was built, the company rented out a portion of the factory to a urea company for 3 years for use as a store. The Collector alleged that since the special conditions specify that the land should be used solely for the erection of a factory, it was a breach of conditions to use a portion as a store. He sought to take action to forfeit the land unless the applicant remedies the breach by June 30, 1976. The applicant sought for a declaration that the Collector's action was bad in law.

The issues to be decided were whether the use carried with it the use as a store of a portion of a factory that had been erected, and, if so, whether the store could be used to hold not only the goods of the factory, but also other goods.

Held: (1) a store was a necessary appurtenance or natural incident to a factory, and the putting up of a store did not create a wider obligation than intended by the conditions in title. If it was intended that the factory were to have no store or that it were not to use its store for storage of goods other than the factory's own goods or products, then it must be so expressed;

(2) since there was no special condition in this case, the renting of a portion of the building to be used as a store did not constitute any breach against any condition in the title.

Cases referred to:-

(1) *Kemp* v. *Bird* (1877) 5 Ch.D. 974.

(2) *Hymen* v. *Rose* [1912] A.C. 623.

ORIGINATING MOTION.

Chua Jui Leng for the applicant.

Suleiman bin Hashim (State Legal Adviser) for the respondent.

Syed Othman J.: The applicant was granted a 60 year old lease over 3 acres of State Land with special conditions, the main one being "solely for the erection of a factory". The factory was built. Then the company rented out a portion of the factory to a urea company for 3 years for use as a store. The collector saying there is a breach of the special conditions takes action to forfeit the land, unless the applicant remedies the breach by June 30, 1976.

The applicant now seeks a declaration that the collector's action is bad in law.

The qualified title issued in May 1971 in respect of the land — (H.S.(D) 8589 MLO 3298) in the Mukim of Pulai, District of Johor Bahru — contains special conditions, which are partly in Malay and partly in English. The conditions (with those in Malay rendered in English) appearing in the photostat copy of the qualified title attached to the applicant's affidavit, read:

"SHARAT2 KHAS HAKMILEK SEMENTARA

1. Hakmilek ini ada-lah terta'alok kapada peruntokan2 Kanun Tanah Negara dan kapada segala Sharat2 Nyata dan Sekatan2 —

(a) ia-itu terta'alok saperti itu juga pemberian milek ini telah di-luluskan, lihat Surat-menurut Bil. AAJB.3/V/243/69 and 287/59-11.

Special Conditions

(i) The land hereby leased shall be used solely for the erection of a factory.

(ii) Within 24 months from the date of Registration of Q.T., the lessee shall build upon the land hereby leased only a factory according to plan approved by the Town Council and the Collector of Land Revenue, Johore Bahru.

(iii) The land hereby leased shall not be transferred, charged, sub-leased or otherwise disposed of until the building of the factory required by the condition first above written has been completed as envisaged by endorsement thereon under the hand of the Commissioner of Lands and Mines.

(iv) The lessee will pay and discharge all taxes, rates, assessment and charges whatsoever which may be payable for the time being in respect of the land hereby leased by a Town Council or any other authority.

(v) The building shall be erected or used for residential purpose on the land hereby leased except for the purpose of accommodating not more than two persons employed as Watchmen.

(vi) The lessee shall employ and train all Federal Citizens into executive and technical appointments up to managerial level with particular emphasis on the recruitment and training of Malays so that at least 40% of all grades of employment shall be filled by Malays."

The factory was built and the Commissioner of Lands on August 13, 1975 made this endorsement at the back of the title:

"The provision of special condition (ii) hereto has been fulfilled as certified by the Yang di-Pertua Majlis Bandaran Johore Bahru vide ref: Certificate of Fitness for occupation No. 303/75 and the provision of special condition (iii) is hereby lifted."

On January 22, 1976 the Collector of Land Revenue, Johore Bahru, issued a notice to the applicant under section 128 of the National Land Code (the Code) to remedy a breach of condition. The notice in English would read:

"Whereas I the undersigned am satisfied that a breach of the conditions scheduled below has arisen in that: you have built a factory the use of which is against the condition of the title (a portion of this factory has been rented to Perbadanan Urea dan Baja Malaysia Sendirian Berhad as a store)."

On March 8, 1976 the collector issued a notice under section 129 of the Code requiring the applicant to appear before him in an inquiry to show cause why he should not declare the land forfeit to the State.

From the notes of inquiry, held on March 29, 1976, the applicant admitted having rented a portion of factory building to the urea company as a store and asked for time to evict the urea company. The collector purporting to act under section 129 of National Land Code allowed the applicant until June 30, 1976 to do so; otherwise action to forfeit the land would be taken.

There is no dispute that the land leased is under the category of "industry" in view of the reference by both sides to section 117 of the Code. Taking the portion which is applicable here, the section reads:

"117 (1) Where any alienated land is subject by virtue of any provision of this Act to the category of 'industry', the following implied conditions shall, subject to sub-section (2), apply thereto —

(a) that it shall be used only for industrial purposes, that is to say, for the purpose of erection or maintenance of factories, workshops, foundries, warehouses, docks, jetties, railways or other buildings or installations for use for or in connection with one or more of the following purposes —

(i) manufacturing;
(ii) smelting;
(iii) the production or distribution of power;
(iv) the storage, transport or distribution of goods, or other commodities;
(v) such other purposes as the State Authority may prescribe for the purposes of this section by rules under section 14.

xx xx xx

(2) The conditions specified in sub-section (1) shall be implied in the case of any land to the extent only that they are not inconsistent with any express conditions to which the land is for the time being subject."

For the applicant, it is argued in effect that the applicant has complied with the positive condition to build a factory, and since there is no restriction to other use, it must be implied that it is permissible to use part of the building as a store by reason of section 117 of the Code.

Encik Suleiman, State Legal Adviser, for the collector argues that since the special conditions specify that the land should be used solely for the erection of a factory, it is a breach of conditions to use a portion as a store, and section 117 can only apply if they are not inconsistent with the special conditions, which must be read together with the papers mentioned in paragraph 1(a) of the lease, which specified that the land leased shall be used "solely for the erection of a factory." It seems to be accepted that with this use there will be manufacturing and smelting and the production or distribution of power referred to in sub-paragraphs (i), (ii) and (iii) of paragraph (a) of sub-section 117(1). What is urged on behalf of the collector in effect is that the expressed words "solely for the erection of a factory" should be taken as excluding any use for the purpose of storage referred to in sub-paragraph (iv) of the sub-section.

Paragraph 1(a) of the special conditions, referred to, rendered in English would read:

"1. This title is subject to the provisions of the National Land Code and all those Express Conditions and restrictions —

(a) subject to which alienation was approved vide correspondence No. AAJB.3/243/69 and PTG. 267/59-11."

To put matters in proper order, I shall first deal with PTG 267/59-11 which the collector has referred to in one of his affidavits. This is an action paper of the State Executive Council meeting of February 11, 1970. The relevant portion rendered in English reads:

"MZO 1
Ref. (73) PTG 267/59-11

ACTION PAPER

xx xx xx

Agreed that plots in area of Jalan Scudai, Johor Bahru as per plan (37A) in PTG. 267/59-11 be converted into light Industrial Zone, and be allotted to the applicants stated below:—

	Name	Acreage	Type of Industry
1.	x	x	x
2.	x	x	x
3.	x	x	x
4.	Syarikat South Malaysia Industries Co. Ltd. Batu 5, Jalan Tebrau, Johor Bahru	3 acres (MLO 2288)	Construction of Zinc wire-netting, screws and nuts factory.
5.	x	x	x
6.	x	x	x

subject to fees payable and conditions as per para. (7) of paper J/HB (T) 69/B/70 and together with alterations as stated herewith:—

(i) Premium to be paid at 30 cents per square foot.

The Council also agrees to:—

(i) .....

(ii) The successful applicants be required to place a deposit of $5,000 as a surety that they build the factory within the specified time failing which the deposit will be forfeited by the government."

Acting on this decision the collector sent the applicant letter AAJB/3/4/243/69 dated March 1, 1970. An English translation of the material part is to this effect.

"Director,
Syarikat South Malaysia Industries Co. Ltd.,
Batu 5, Jalan Tebrau,
Johor Bahru.

Allotment of Land MLO 2288 for factory manufacturing zinc, wire-netting, screws and nuts at Jalan Scudai, Johore Bahru.

I am pleased to inform you that the government has agreed to grant land MLO 2288 at Jalan Scudai, Johor Bahru for the construction of a factory by your company subject to payments and conditions of alienation as stated in form 5A which is attached herewith.

Other than payments to be made in the sum of $46,603 you are required to deposit in this office a sum of $5,000 as surety that your company will erect the factory within the specified time, failing which your deposit will be forfeited by the government."

In *Kemp* v. *Bird*[1] the principle laid down is that a restrictive covenant should be construed strictly so as not to create a wider obligation than is intended by the words.

Of the authorities cited by Encik Chua, I need only refer to *Hymen* v. *Rose*.[2] In this case a piece of ground and the chapel then erecting thereon was demised for a term of 99 years less 10 days. The chapel was completed and it was used as a place of religious worship for 60 years. The lease was then sold and the premises were adapted for a cinema. The House of Lords reversing the decision of the Court of Appeal held that in view of the fact that the lease did not prohibit the contemplated user of the premises, none of the alterations, in the circumstances of the case, constituted either a breach or waste. Earl Loreburn L.C. at page 631 said:

"Now I have examined the lease... I do not find anything in it which requires that the building shall be used as a chapel; certain trades are forbidden, but there is nothing to prevent its user for any other trade. Nor is there anything to prohibit internal alterations suitable for such a trade."

The principle underlying this authority, as far as I can see, is that in a lease if it is contemplated to prohibit a different user or alteration of premises for different user, then there must be an express condition. In the present case it is common ground that the land leased shall be used "solely for the erection of a factory." The questions to be determined are whether the use carries with it the use as a store of a portion of a factory that has been erected, and, if so, whether the store can be used to hold not only the goods of the factory, but also other goods. In the context of the principle stated in *Kemp.* v. *Bird, supra* the question is does the use of a portion of a factory as a store create wider obligation than intended by the words "solely for the erection of a factory."

The Action Paper and the collector's letter referred to in the present case speak of the allotment of land for a factory to manufacture zinc, wire-netting, screws and nuts. I am inclined to regard this as a general description of the subject matter. Paragraph 1 of the letter seems to approve the allotment of land for the construction of a factory generally. In any case, considering section 117(2) of the Code, if the intention was to exclude any of the activities referred to in section 117(1) of the Code, then it must be shown that there is inconsistency with any express condition. I cannot see the putting up of a store in a factory would be inconsistent with the use of the land for a factory, whether or not the condition is stated to be "solely". I consider a store is a necessary appurtenance or natural incident to a factory, and the putting up of a store does not create a wider obligation than intended by the conditions in the title. In this case if it was intended that the factory shall have no store then it must be expressed. Similarly if it was intended that the factory shall not use its store for storage of goods other than the factory's own goods or products, then it must be so expressed. In the absence of any of these prohibitions, I am of the view that the factory can use its store not only for its own goods but also for other commodities. Section 117(1)(a)(iv) says "storage ... of goods, or other *commodities*." The emphasis is mine.

I come now to the question of renting out of a portion of the building. This act seems to form part of the collector's objection. The applicant has fulfilled the positive condition *i.e.* the erection of a factory. With the lifting of condition (iii), the applicant may transfer or sub-lease. If it is permitted to transfer or sub-lease the whole land, I do not see what objection is there to transferring or sub-leasing a portion, provided, of course, that the use of the portion is still within the industrial context. To my mind, there must be an express prohibition, if it was intended to restrict the applicant from sub-leasing or allowing any other person occupying part of the premises, even if the use is for the purpose within the terms of the lease.

Taking the alleged breach as a whole *i.e.* "a portion of this factory has been rented to Perbadanan Urea dan Baja Malaysia Sendirian Berhad as a store", the collector's objection is the renting of a portion of the building to Perbadanan Urea dan Baja Malaysia Sendirian Berhad as a store. I am of the view that this can only become a breach if there is a special condition which reads "No portion of the factory shall be rented out to any urea company as a store". I cannot see any such prohibition expressed or implied, to this effect, in any of the papers referred to or in the special conditions, in the issued title, read singly or together.

I would also like to mention here, I think it is undesirable to make reference to correspondence or file as stating to be part of special condition. If any part of them is to form a special condition, it would be better to spell it out in the title issued, so that subsequent holders of the title may have notice of it. Correspondence and files have a tendency to be missing or untraceable after some years.

On the grounds foregoing I am satisfied that the applicant has committed no breach against any condition in the title. I declare the collector's notice to be of no effect and unenforceable.

Before I leave Encik Chua agrees with me that special condition (v) as appearing in the qualified title contains a mistake as against the one appearing in Form 5A referred to above, which reads:

"No building shall be erected or used for residential purpose on the land hereby leased except for the purpose of accommodating not more than two persons employed as Watchmen."

Note the first word appearing above is "No". But in the qualified title (see above) the word "No" has been substituted by the word "The". By the wording of the condition as it stands in the qualified title, the applicant may erect residential quarters so long as they are not for more than two "jagas". This was clearly not intended. The error should be rectified.

Order accordingly.

Solicitors: *Chua Bros.*